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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,376	08/17/2001	Steven F. Spiers	021238-460	1593

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EXAMINER

MAUST, TIMOTHY LEWIS

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 01/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/931,376

Applicant(s)

SPIERS ET AL.

Examiner

Timothy L. Maust

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 12-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 12-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

### ***Drawings***

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed. The reference numbers and lead lines are not uniform throughout the Figures.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Atwell et al. (5,875,824).

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In regard to claim 1, the Atwell et al. reference discloses an "apparatus" 50 comprising a "filling chamber" 300, a "rotating wheel" (200 and 400), having at least one "pocket" (210 and 410) and a "conveying device" 34, as claimed.

In regard to claim 2, see "drum" (295 and 495) and "vacuum chamber" (220 and 420).

In regard to claim 3, Figure 2c shows the claimed structure including "screen" 214, which is similar to wheel 400.

In regard to claim 4, "chute" 100 supplies "filling chamber" 300.

In regard to claim 5, "screen" 214 is clamped by a "clamp ring" (unlabeled; defined by the inner notched wall of wheel 200 that holds the screen in place (see Fig. 2c).

In regard to claim 6, see column 4, lines 39-65.

In regard to claim 8, "conveying device" 34 includes a "vacuum chamber" 500.

In regard to claim 9, see column 6, line 51 through column 7, line 9.

In regard to claim 10, the method as claimed would be inherent during normal use and operation of the device.

Claims 1, 2, 4-7, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Stirn et al. (2,540,059).

In regard to claims 1 and 6, the Stirn et al. reference discloses an "apparatus" (see Fig. 1) comprising a "filling chamber" 5, a "rotating wheel" 3, having at least one "pocket" 15 and a "conveying device" 46, as claimed.

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In regard to claim 2, see "drum" 24 and "vacuum chamber" 27 in Figure 4.

In regard to claim 4, a "chute" is defined by the upper, tapered portion of filling chamber 5.

In regard to claim 5, "screen" 214 is clamped by a "clamp ring" (unlabeled; defined by the inner notched wall of wheel 200 that holds the screen in place (see Fig. 2c).

In regard to claim 7, see "guide vanes" 6.

In regard to claims 10 and 11, the method as claimed would be inherent during normal use and operation of the device.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Kawaguchi et al. reference discloses a rotating particulate dispenser, similar to Applicant's device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L. Maust whose telephone number is (703) 308-3390. The examiner can normally be reached on Mon. - Thur. 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7766 for regular communications and (703) 308-7766 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0975.

A handwritten signature in black ink, appearing to read "T. Maust".

Timothy L. Maust  
Primary Examiner  
Art Unit 3751

tlm  
January 23, 2003